

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANTWON ROGERS, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Civil Action No. 08-149 Erie

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on May 15, 2008, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 57], filed on February 9, 2010, recommended that Defendants' motion to dismiss or, alternatively, for summary judgment [Doc. No. 52] be granted in part and denied in part. Specifically, the Magistrate Judge recommended that the motion be:

1. granted as to the *Bivens* and RFRA/RLUIPA claims of all Plaintiffs regarding prayer oils due to their failure to exhaust in accord with the PLRA;
2. granted as to all the *Bivens* and RFRA/RLUIPA claims relating to the Eid meal in January of 2006 by Plaintiff Campbell as he has failed to exhaust in accord with the PLRA;
3. granted as to the RLUIPA claims of all Plaintiffs;
4. granted as to the RFRA claims of all Plaintiffs;
5. denied as to the *respondeat superior* argument as to Defendants Sherman and Robare;
6. denied as to the First Amendment free exercise claim;¹

¹The Court finds that the record in this case differs materially from that in Ellis v. United States of America, No. 08-160 (W.D.Pa. Sept. 28, 2009), such that this Court's Memorandum Order of September 28, 2009 adopting in part and rejecting in part the Magistrate Judge's Report and Recommendation is not controlling here with respect to

7. denied as to the Fifth Amendment equal protection claim;
8. granted as to the substantive due process claim under the Fifth Amendment;
9. granted as to the procedural due process claim under the Fifth Amendment;
10. denied as to the qualified immunity defense of all individual Defendants;
11. granted as to the dismissal of the FTCA claims against the individual Defendants; and
12. granted as to the FTCA claim against the United States.

It was further recommended that the Clerk of Courts be directed to terminate Plaintiff Campbell from this action due to his failure to exhaust his *Bivens* and RLUIPA/RFRA claims and because the FTCA claims are without merit; and that Clerk of Courts terminate the United States of America as a party to this action.

The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiffs by certified mail and on Defendants. No objections were filed. After de novo review of the motion and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 10th day of March, 2010;

IT IS HEREBY ORDERED that the motion is:

1. GRANTED as to the *Bivens* and RFRA/RLUIPA claims of all Plaintiffs regarding prayer oils due to their failure to exhaust in accord with the PLRA;
2. GRANTED as to all the *Bivens* and RFRA/RLUIPA claims relating to the Eid meal in January of 2006 by Plaintiff Campbell as he has failed to exhaust in accord with the PLRA;
3. GRANTED as to the RLUIPA claims of all Plaintiffs;
4. GRANTED as to the RFRA claims of all Plaintiffs;

Rogers' First Amendment claim.

5. DENIED as to the *respondeat superior* argument as to Defendants Sherman and Robare;
6. DENIED as to the First Amendment free exercise claim;
7. DENIED as to the Fifth Amendment equal protection claim;
8. GRANTED as to the substantive due process claim under the Fifth Amendment;
9. GRANTED as to the procedural due process claim under the Fifth Amendment;
10. DENIED as to the qualified immunity defense of all individual Defendants;
11. GRANTED as to the dismissal of the FTCA claims against the individual Defendants; and
12. GRANTED as to the FTCA claim against the United States.

IT IS FURTHER ORDERED that the Clerk of Courts terminate Plaintiff Campbell from this action due to his failure to exhaust his *Bivens* and RLUIPA/RFRA claims and because the FTCA claims are without merit; and terminate the United States of America as a party to this action.²

The Report and Recommendation [Doc. No. 57] of Magistrate Judge Baxter, filed on February 9, 2010, is adopted as the opinion of the Court.³

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge

²The retaliation claims of Plaintiffs Singh and Rogers remain pending as Defendants have not moved for summary judgment on those claims.

³The Court does not adopt, however, the “opinion” expressed by the Magistrate Judge in her Report and Recommendation at page 26, footnote 20, because it is unnecessary to a disposition of the Defendants’ motion.